**S.B. Civil Second Appeal No.118/2000**
**Mahendra Singh**
**vs.**
**Moti Lal**

**DATE OF ORDER** : - 2.8.2005

**HON'BLE MR. PRAKASH TATIA,J.**

Mr.JK Bhaiya, for the appellant.
Mr.BLPurohit, for the respondents

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Heard learned counsel for the parties.

Brief facts of the case are that the plaintiff-respondent filed a suit for eviction against the appellant-defendant-tenant on the ground of personal bonafide necessity. According to plaintiff, the plaintiff's two sons, who were of the age of 22 and 19 years are in need of the shop in question. The case set up by the plaintiff in the plaint itself is that the plaintiff's both the sons are doing business at Mumbai and he disclosed the business also, which is electric hardware business. The plaintiff pleaded that the weather at Bombay is not suitable for the plaintiff's two sons, therefore, both have decided to shift from Mumbai to Udaipur, which is their native place and there plaintiff's sons will do the business. The plaintiff in above circumstances, decided that his sons may start their business at Udaipur in plaintiff's property. The plaintiff, therefore, sought eviction of tenant from the suit premises. The

plaintiff also pleaded that the defendant materially altered the premises, but that plea was negatived by the trial court as well as by the appellate court. The trial court also rejected the plaintiff's plea about the necessity of the suit shop on two counts. One is that the plaintiff failed to prove need of his sons and second the plaintiff has another premises lying vacant at Udaipur itself, therefore, the need is not bonafide.

The plaintiff preferred appeal against the judgment and decree of the trial court dated 7th July, 1995. The appellate court reversed the finding of the trial court on issue of personal bonafide necessity of the plaintiff and decided the issue of personal bonafide necessity in favour of the plaintiff and consequently passed the decree for eviction of the tenant. Hence, this second appeal.

According to learned counsel for the appellant, the plaintiff failed to prove that plaintiff is in need of the shop in question for running business of the plaintiff's son. It is also submitted that in fact, the evidence produced by the plaintiff himself sufficient for rejection of the plaintiff's plea of his need. According to learned counsel for the appellant, two sons of the plaintiff are in business and settled at Mumbai, therefore, the plea taken by the plaintiff that they will shift to Udaipur cannot be accepted. It is also submitted that the plaintiff came

with a case that weather is not suitable, but plaintiff failed to produce any medical prescription to show that the plaintiff's two sons since are sick and they are required to be shifted from Mumbai to Udaipur. Learned counsel for the appellant further submitted that the trial court held that the adjoining shop is lying vacant and if there was any need of the plaintiff's sons,they could have started their business in the adjoining shop. Learned counsel for the appellant submits that there was no reason for appellate court to reverse the finding recorded by the trial court.

Learned counsel for the appellant also read the entire judgment of the appellate court and tried to refer the evidence of the plaintiff wherein the plaintiff's sons admitted that the plaintiff's sons are doing business at Mumbai.

I considered the submissions of learned counsel for the appellant. It appears from the entire argument of learned counsel for the appellant that no substantial questions of law are involved in this appeal inasmuch as the entire contention is that the evidence which has been produced by both the parties has been wrongly considered by the appellate court. It appears from the reasons given by the first appellate court that the first appellate court recorded categorical finding that the allegation of having a shop vacant and in possession of the plaintiff is not correct and

appellate court further held that even it has not been proved by evidence that the said shop, which according to appellant-defendant is vacant is suitable for the business of the plaintiff's sons. The appellate court also after considering the reasons given by the trial court considered the evidence of each witness as well as circumstances on the basis of which the suit has been filed. The appellate court rejected the appellant's-defendant's plea that since the medical prescriptions have not been produced by the plaintiff, therefore, there is no material available on record to prove that plaintiff's two sons were sick. The argument has been advanced on behalf of the appellant only under assumption that even in cases where allegation is about the non-suitability of the weather even then one is required to produce medical evidence to prove that he suffered serious or some permanent disease. The trial court's reasons given for rejection of the argument of the defendant-tenant cannot be said to be altogether devoid of any reason or basis or foundation.

In sum and substance, learned counsel for the appellant tried to invite the attention of this Court towards the evidence produced by the parties so as to reassess the entire evidence and record altogether different finding on issue of facts for which the first appellate court has already applied its mind. It is settled law that finding of fact even if erroneously recorded by the first appellate court even then unless that

finding is vitiated because of the well known reasons then only the High Court can interfere in the finding of fact recorded by the first appellate court.

In view of the above, I do not find any substantial question of law in this appeal. Hence, the appeal deserves to be dismissed, hence, dismissed.

At this stage, learned counsel for the appellant prayed some time for vacating the premises. Learned counsel for the respondent-landlord vehemently contested this also on the ground that the suit for eviction was filed as back as in the year 1987 and about more than 17 years have already passed. It is also submitted that even after decree of eviction and the judgment and decree of the first appellate court more than five years have already passed. Therefore no time be granted to the defendant for vacating the suit shop.

In the facts of this case, since the appellant is running his Dental clinic, therefore, he certainly may need some more time to vacate the premises for making certain arrangements. Therefore, this Court deems it proper that decree under challenge may not be executed till 31st July, 2006 provided the appellant furnishes a written undertaking before the trial court within a period of 15 days from today that he shall hand over

the vacant possession of the premises in question on or before 1st August, 2006 to the landlord. He shall also give an undertaking that he will not sub-let or part with possession of the property in dispute. The appellant shall also pay decretal amount and arrears of rent if due, within a period of one month from today to the landlord and may deposit the amount in the trial court. The appellant shall also pay the rent month by month by 15th day of each succeeding month. In case of non-compliance and default, the decree shall become executable forthwith.

**(Prakash Tatia), J.**

c.p.goyal/-